IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 326 of 2002
In
COMPANY PETITION No. 271 of 1996
With
COMPANY APPLICATION No. 327 of 2002
In
COMPANY PETITION No. 223 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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C.K.P. CO-OPERATIVE BANK LTD. - Applicant(s)
Versus
O.L. OF GOODEARTH ORGANICS (INDIA) LTD. & 4 - Respondent(s)

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Appearance :
MR MUKESH A PATEL for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,
MR RM DESAI for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4,
DELETED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/10/2006

ORAL JUDGMENT

By way of this Judges summons, the respective applicants i.e. CKP Cooperative Bank Limited has prayed for an appropriate order granting the permission to proceed further for execution of the judgment and order dated 2-8-2001 passed by the Cooperative Court, Mumbai and the certificates issued by the Cooperative Court, Mumbai and as a consequence thereof, the Official Liquidator of Good Earth Organics (India) Ltd be directed to hand over the possession of the properties and machineries shown in the hypothecation deed attached with the registration application for registration of charge before the Registrar of Companies.

2. It is the contention on behalf of the applicants that the company in liquidation approached the applicants for the purpose of taking loan in the year 1997 and in pursuance to the application made by the company, certain loans were sanctioned. It appears from the record that the loan was disbursed on 31-3-1997, hypothecation agreement was entered into on 30th April, 1997. It is the case of the applicants that they have registered a charge

with the Registrar of Companies by application dated 25-6-1997 and the same was registered with the Registrar of Companies on 15-10-1998. It is the contention on behalf of the applicants that they have approached before this Court for granting them permission to proceed further with the suit/appeal before the Tribunal under section 446 of the Companies Act which was granted by the Company Court and the Official Liquidator was also joined as a party respondent and the applicants have filed execution application on the basis of the certificate and the judgment and order passed by the Tribunal and therefore, the present application has been filed.

3. Shri Mukesh Patel, learned advocate appearing on behalf of the applicants has vehemently submitted that the loan was disbursed on 31-3-1997 backed by hypothecation agreement and even the charge was also registered with the Registrar of Companies and therefore, they have become the secured creditors and it was a routine transaction during the course of the business by the company as well as the applicants and therefore, it is requested to grant the permission as prayed for.

4. Shri Ashok L. Shah, learned advocate appearing for

the Official Liquidator has submitted that provisional liquidator of the company in liquidation was appointed on 7-4-1997 and the hypothecation agreement is dated 30-4-1997 and even the charge was registered with the Registrar of Companies only on 15-10-1998 i.e. after the appointment of provisional liquidator and also after the order of winding up dated 15-4-1998. Relying upon section 125 of the Companies Act, it is submitted that any charge after the winding up order is void. It is submitted that the appropriate remedy for the applicants would be to prefer appropriate application under section 536(2) of the Act. He has also relied upon section 530 of the Companies Act. It is also further submitted by him that the Official Liquidator/Sale Committee is yet to consider the claims of the applicants and decide whether the applicants can be said to be secured creditors or not.

5. It appears from the record and submission that the Sale Committee has called upon the applicants to produce certain relevant documents to consider the claims of the applicants. It is not in dispute that the provisional liquidator came to be appointed on 7-4-1997 and the company was ordered to be finally wound up on 15-4-1998. It also appears from the record that a charge in favour

of the applicants on the basis of the hypothecation agreement, came to be registered with the Registrar of Companies on 15-10-1998 though the application is dated 25-6-1997. Thus, the charge is registered after the order of winding up. In view of the above, let the applicants approach the Official Liquidator/Sale Committee in support of their claims as secured creditors along with necessary documentary evidence and if the applicants approach the Official Liquidator/Sale Committee within a period of four weeks from today, the Official Liquidator/ Sale Committee is directed to consider the same and take appropriate decision whether the applicants can be said to be secured creditors or not and communicate the outcome of the same to the applicants and such a decision to be taken within a period of three months from the date of making such an application and/or approaching the Official Liquidator/Sale Committee. If the applicants are aggrieved, it may approach this Court by way of appropriate application and/or even to submit an application under section 536(2) of the Act for regularizing and/or validating the action and/or transaction, which can be dealt with in accordance with law and on its own merits.

6. With these, the present applications are disposed off with an observation that this Court has not expressed any opinion on merits in favour of either party. No costs.

(M.R.SHAH,J.)

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